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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,000	02/05/2004	Anup Sood	PB0313	5599
22840	7590	01/31/2008	EXAMINER	
GE HEALTHCARE BIO-SCIENCES CORP. PATENT DEPARTMENT 800 CENTENNIAL AVENUE PISCATAWAY, NJ 08855			POHNERT, STEVEN C	
		ART UNIT	PAPER NUMBER	
		1634		
		MAIL DATE	DELIVERY MODE	
		01/31/2008	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/773,000

**Applicant(s)**

SOOD ET AL.

**Examiner**

Steven C. Pohnert

**Art Unit**

1634

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 January 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2.  The Notice of Appeal was filed on 14 January 2008. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
  - They raise new issues that would require further consideration and/or search (see NOTE below);
  - They raise the issue of new matter (see NOTE below);
  - They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_

6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 1-56.

Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
see continuation sheet.

12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13.  Other: \_\_\_\_\_

RAM R. SHUKLA, PH.D.  
SUPERVISORY PATENT EXAMINER

**Attachment to Advisory**

**Continuation of box 7:** The amendments filed on 1/14/2008 have been entered but do not overcome the New Matter Rejection or the art of record.

The response of 1/14/2008 asserts that the specification does provide adequate support for the recitation of "without first separating by charge of said detectable species from the mixture." The response asserts that the specification provides support on page 4, lines 6-9; page 4, lines 12-14; page 12, lines 1-6 and page 13, lines 25-33. These sections do not discuss or suggest the limitation of detection without separation by charge. The MPEP states in 2173.05, "Any claim containing a negative limitation which does not have basis in the original disclosure should be rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement." Thus inclusion of a negative limitation that is not supported by the specification is new matter.

The response further asserts that 102(b) rejection of Williams does not anticipate the instant claims and the examiner has mischaracterized the teachings of Williams. The response specifically asserts that as Williams title and abstract are direct to charge switch nucleotides in which the phosphate flourophore has a different charge than the phosphate flourophore attached to the nucleotide. This is present in both Williams and the instant invention. The response further asserts that the charge differential will allow them to migrate to electrodes, which is also correct. However, Williams presents a method on page 24, lines 15-26, that does not recite a step of separating based on charge. Further Willaims teaches on page 20, lines 20-25, that separation of the cleaved phosphate dye by diffusion, which does not require separation by charge.

Thus Williams teaches a method that does not require separation based on charge and thus anticipates the instant claims.

The response further asserts that the method of Williams requires physical separation of the fluorophore. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., physical separation) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Thus these arguments are moot.

The response presents no other arguments with respect to the 103s of record other than to say that Williams does not anticipate the instant claims. These arguments have been addressed above. Thus the 103 rejections of record are maintained.

**Continuation of box 11:**

The request for reconsideration has been considered but does not place the application in condition for allowance for the reasons above.

Applicants arguments have not overcome the art of record.

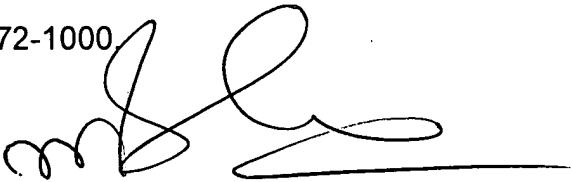
**Conclusions**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven C. Pohnert whose telephone number is 571-272-3803. The examiner can normally be reached on Monday-Friday 7:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ram Shukla can be reached on 571-272-0735. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Steven Pohnert



RAM R. SHUKLA, PH.D.  
SUPERVISORY PATENT EXAMINER